

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CURTIS WHEAT,

Plaintiff,

vs.

FIFTH THIRD BANK,

Defendant.

Case No. 1:11cv737

Chief Judge Dlott
Magistrate Judge Bowman

ORDER

This civil action is now before the Court on Defendant Fifth Third's motion to strike Exhibits 7, 8 and 9 attached to Plaintiff's Memorandum *Contra* to Fifth Third's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (Doc. 85). Fifth Third asserts that these documents are not authenticated, are inadmissible hearsay and therefore, cannot be considered when deciding Fifth Third's Motion for Summary Judgment. Plaintiff did not respond to the motion to strike.¹

On March 4, 2013, the Plaintiff filed a Memorandum *Contra* to Defendant's Motion for Summary Judgment with supporting attachments. (Doc. 66, Attach. 1-12). Plaintiff submitted Exhibits 7, 8, and 9 as attachments to this Memorandum. *Id.* According to Plaintiff, Exhibits 7 and 8 are written statements he obtained from Anna Jordan ("Jordan") and Lataescha McNear ("McNear"), his former co-workers when he was employed with Fifth Third. *Id.* at p. 9. However, Fifth Third asserts that Plaintiff has not submitted any affidavits from Jordan and/or McNear authenticating the documents

¹ Based upon Plaintiff's failure to respond to the instant motion, Plaintiff's counsel is put on notice that any subsequent motion for reconsideration of this Order will be denied.

as their written statements. He also has not submitted any affidavits from Jordan and/or McNear concerning any of the information in Exhibits 7 and 8. Fifth Third further contends that Plaintiff has not submitted any deposition testimony from Jordan and McNear concerning any of the information in Exhibits 7 and 8, or any other information relevant to his claims.

In addition to Exhibits 7 and 8, Plaintiff also submitted a document Fifth Third purportedly submitted to the Office of Unemployment Compensation with regard to Plaintiff's claim for Unemployment benefits. (Doc. 66, p. 10). However, Exhibit 9 does not reveal who wrote it and/or what information was used to create the document. Fifth Third further notes that several portions of the document submitted as Exhibit 9 have been redacted. *Id.* Plaintiff has not submitted any affidavits and/or deposition testimony authenticating the document he submitted as Exhibit 9 to his Memorandum Contra. In light of the foregoing, the undersigned finds that such documents are not properly before the court and should not be considered in deciding Fifth Third's motion for summary judgment.

As outlined by Fifth Third, a summary judgment opponent is obliged to "make her case with a showing of facts that can be established by evidence that will be admissible at trial." *Automotive Support Group, LLC v. Hightower*, 11-2508, 12-1067, 2012 WL 5351588 (6th Cir. Oct. 31, 2012) (citing *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009) (citing Fed.R.Civ.P. 56(e)(2))). Thus, hearsay evidence cannot be considered in a motion for summary judgment. *Id.* (citing *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 927 (6th Cir.1999)). Likewise, this court has repeatedly emphasized that "unauthenticated documents do not meet the

requirements of Rule 56(e).” *Id.* (citing *Alexander*, 576 F.3d at 558 (listing cases)). Moreover, “documents submitted in support of a motion for summary judgment must satisfy the requirements of Rule 56(e); otherwise, they must be disregarded.” *Alexander*, 576 F.3d at 558 (citing *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962, 968-69 (6th Cir. 1991), and *State Mutual Life Assurance Co. of America v. Deer Creek Park*, 612 F.2d 259, 264 (6th Cir. 1979)).

Here, the documents at issue are unauthenticated and also inadmissible hearsay. Accordingly, Plaintiff’s motion to strike (Doc. 85) is well-taken and is herein **GRANTED**. Exhibits 7, 8 and 9 attached to Plaintiff’s Memorandum Contra to Fifth Third’s Motion for Summary Judgment are **STRICKEN** from the record and will not be considered in connection with Fifth Third’s motion for summary judgment.

IT IS SO ORDERED.

/s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge